



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA # 2013-87
Site: 62-64 Hooker Avenue
Date of Decision: December 11, 2013
Decision: Petition Approved with Conditions
Date Filed with City Clerk: December 13, 2013

ZBA DECISION

Applicant Name:	Laura Beretsky & Mark Jewell
Applicant Address:	64 Hooker Avenue, Somerville, MA 02144
Property Owner Name:	Laura Beretsky & Mark Jewell
Property Owner Address:	64 Hooker Avenue, Somerville, MA 02144
Agent Name:	N/A

Legal Notice: Applicant and Owners, Laura Beretsky and Mark Jewell, seek a Special Permit under SZO §4.4.1 to alter a nonconforming structure by adding a dormer.

<u>Zoning District/Ward:</u>	RB zone/Ward 7
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	November 22, 2013
<u>Date(s) of Public Hearing:</u>	December 12, 2013
<u>Date of Decision:</u>	December 12, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-87 was opened before the Zoning Board of Appeals at Somerville City Hall on December 11, 2013. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal is to build a 22 foot long shed dormer on the right side of the house. The dormer length would be 50% of the length of the sloping roof to which it is attached. The dormer will be setback 3 feet 4 inches from the front edge of the house. The top of the dormer will reach the ridge of the roof and the dormer wall will align with the main wall of the house. The dormer is constructed to provide headroom for the stairway and to accommodate a bathroom and bedroom in the half story.

This dormer is under construction. Framing work has essentially been completed, and the contractor has provided structural support through the house to support the dormer in its current location.

The construction of the dormer originated from a misunderstanding between the applicant and ISD.

The applicant filed an application for a dormer in July and a building permit was issued. However, the documentation on file of what was approved to be constructed is not conclusive.

The applicant included with their application an earlier plan. This plan showed a 40.5 foot dormer to be constructed on the driveway (left) side of the house that is not dated. A dormer on the left side of the house would be more than 8 feet from the property line and would therefore be by-right. The applicant changed their plans to build the dormer, as a left-side dormer would not allow proper headroom at the stairway. At some point in time, prior to construction, the applicant provided a plan showing the dormer on the right side, as it is being built. That plan, dated July 25, 2013, is also in the ISD file. But, this plan was likely submitted after the building permit was issued (the building permit is dated July 9, 2013), and therefore filed without an updated review by ISD. Even if it was reviewed by ISD, the lack of directional detail on the plan makes it easy to misunderstand. The Applicant is stating that there was another plan not in the file for a 22 foot dormer that was submitted prior to the permit being issued. And, while ISD would likely have told the applicant about the Special Permit requirement if a right-side dormer was in the original application, the applicant was apparently not aware and not told that a right-side dormer required additional review.

There is no reference to the side of the building where the dormer would be constructed on the application form or on the building permit which Inspectional Services issued on July 9, 2013.

The Planning Division staff has done an extensive amount of discussion with both the applicant and ISD in an effort to discover how this situation occurred. The staff is confident that this situation is a result of an unfortunate and unforeseen miscommunication between an applicant unfamiliar with the Somerville Zoning Ordinance and an ISD office that received updated paperwork after the issuance of a building permit.

The applicant began construction of the dormer this fall, and was just short of a framing inspection when the right-side dormer was discovered. A stop work order was issued on November 19, 2013 when Inspectional Services were called to the site and saw that the dormer was constructed on the side of the house that requires a special permit to be constructed. At this time, the applicants have temporary wall coverings and are seeking approval to close up the openings covering new structural support that was installed in the first and second floor of the house. But, the third floor dormer has been left unfinished, pending the outcome of the special permit hearing.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.



2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

The structure is currently nonconforming with respect to several dimensional requirements, including minimum lot size, right side yard setback, rear yard setback, and street frontage.

The proposed dormer would impact the right side yard. It would increase the structure's height on the nonconforming side yard which is 5 feet; the minimum side yard setback in this district is 7 feet 8 inches with the reduction allowed for a narrow lot. This existing nonconformity requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

In considering a special permit under §4.4 of the SZO, the Board finds that the placement of a dormer in this location is not detrimental to the neighborhood, as many homes in the neighborhood have similarly placed dormers on roofs in this sort of location, and they have become a common element of typical Somerville houses.

The Board finds that due to the miscommunications with the permitting of the dormer some of the proportions typically supported for shed dormers.

The dormer windows should make up the large majority of the front wall of a dormer. The proposed dormer will have 4 evenly spaced windows that will match in style with the windows below. The windows are shown as being smaller than the windows on the rest of the house. The Applicant's contractor stated that the windows were rendered smaller than they will actually be. They will match the size of the bathroom windows just right of center on the first and second floors. Ideally the windows would match the larger windows on the house; however, there spacing and conformance in size and style with some of the windows below make them acceptable to the Board.

The dormer would impact how the property conforms to the parking and FAR requirements; although, no relief is needed. The parking requirement does not change as a result of the additional bedroom since the unit already had three bedrooms and the parking requirement is the same for a three or more bedroom unit. The dormer would also increase the FAR. There would be 433 square feet of living space in the attic. This would increase the FAR by 0.13 from 0.82 to 0.95. The maximum in the district is 1.0.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The Board finds that the proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to the welfare of the inhabitants of the City of Somerville.

The Board finds that the application for a dormer would be consistent with the general purpose and intent of the Ordinance in building out this two-family home for a growing family.

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The Board finds that due to the miscommunications with the permitting of the dormer some of the proportions typically supported for shed dormers. The surrounding neighborhood is comprised of one- and two-family homes, most of which do not have dormers; however, shed dormers are prevalent in the City. Some dormers require special permits and some do not depending on if they are in the side yard or not. The Planning Division staff is working to fix this regulation in the zoning ordinance to allow modest dormers on either side of a typical roof.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Josh Safdie and Brandy Brooks with Herbert Foster and Danielle Evans absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Josh Safdie seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	<p>Approval is for the construction of dormer on the right (north east) side of the two-family. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>Nov 22, 2013</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>Dec 1, 2008</td> <td>Plans submitted to OSPCD (mortgage inspection plan)</td> </tr> <tr> <td>Submitted Dec 5, 2013</td> <td>Plans submitted to OSPCD (schematic attic plan, existing and proposed elevations)</td> </tr> </tbody> </table> <p>Any changes to the approved elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Nov 22, 2013	Initial application submitted to the City Clerk's Office	Dec 1, 2008	Plans submitted to OSPCD (mortgage inspection plan)	Submitted Dec 5, 2013	Plans submitted to OSPCD (schematic attic plan, existing and proposed elevations)	BP/CO	ISD / Plng.	
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2	The dormer will have 4 evenly spaced windows that will match in style with the windows below.	Prior to window installation	Plng./ISD									
3	The siding on the dormer should be cedar shingle or clapboard as noted on the building permit application & the color should match or be complementary to that of the main house. Color and material samples shall be provided to Planning Staff.	Prior to construction of exterior siding	Plng./ISD									
4	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	Final signoff	Plng./ISD									
5	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final signoff	Plng./ISD									



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
Elaine Severino
Josh Safdie (Alt.)
Brandy Brooks (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

